

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC-2" : DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
ITA.No.6394/Del./2019
Assessment Year 2017-2018

M/s. Galaxy Instruments Pvt. Ltd., Faridabad. PAN AAACG6003E C/o. Shri Kapil Goel, Advocate, F-26/124, Sector-7, Rohini, Delhi-085.	vs.	The ACIT, Central Circle – 25, Room No.322, E-2, ARA Centre, Jhandesalan Extn., New Delhi – 110 002
(Appellant)		(Respondent)

For Assessee :	Shri Kapil Goel, Advocate
For Revenue :	Shri R.K. Gupta, Sr. D.R. [Through Mobile]

Date of Hearing :	16.07.2020
Date of Pronouncement :	16.07.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-29, New Delhi, Dated 18.06.2019, for the A.Y. 2017-2018.

2. Briefly the facts of the case are that the assessee company had filed return of income on 26.10.2017 declaring income of Rs. NIL after setting off brought forward business loss of Rs.2,28,032/- which was processed u/s 143(1) of the IT Act, 1961. A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out in the case of Sh. Pawan Arya and his family members on 02.06.2016 who are directors of the assessee company. A survey was also conducted in the case of assessee on the same day. The cases were centralized. The A.O. considered the issue of unexplained cash found at various premises. The statements of the Directors were recorded regarding explaining the source of the cash. The assessee also filed reply dated 14.12.2018 and admitted that out of the unexplained cash of Rs.1,30,98,000/-, a sum of Rs.5,98,000/- was earned from the business activity of the assessee company. The A.O, therefore, made addition of Rs.5,98,000/ under section 69A of the I.T. Act, 1961.

3. The assessee challenged the addition before the Ld. CIT(A). Apart from challenging the addition on merit, the

assessee also contended that in the present case there is no valid satisfaction laid under section 153C of the I.T. Act and no order under section 143(3) of the Act could have been passed. The assessee filed written submissions before the Ld. CIT(A), but, did not appear before him for oral submissions. The Ld. CIT(A) in the absence of assessee, passed the Order and dismissed the appeal of assessee.

4. Learned Counsel for the Assessee contended that in the present case satisfaction note under section 153C was recorded, copy of which is filed in the paper book, but, from the date of handing-over of the document, the present assessment year would also fall for passing Order under section 153C of the I.T. Act, but, in the present case, no Order under section 153C have been passed, but, the A.O. passed the regular assessment order under section 143(3) of the I.T. Act, 1961. Therefore, there is an inherent illegality in passing the impugned order. He has submitted that though this point raised before the Ld. CIT(A), but, no findings have been given by him. He has further submitted that the assessee filed voluminous written submissions on

this issue as well as on merit explaining the possession of the cash found during the course of search/survey. But, the written submissions of the assessee have not been considered by the Ld. CIT(A) in proper perspective. He has, therefore, submitted that matter may require reconsideration at the level of the Ld. CIT(A).

5. The Ld. D.R. sought adjournment. However, he was available on Mobile Phone during the course of hearing. The Ld. D.R. was apprised of the above fact that Ld. CIT(A) has not decided the appeal on merit and may require reconsideration at his level. The Ld. D.R, therefore, consented that matter may be decided accordingly.

6. We have considered the rival submissions and perused the findings of the authorities below. The assessee has filed copy of the satisfaction under section 153C in the paper book. We find there is a *prima facie* case made out for assessee where assessment in the present case should have been framed under section 153C of the I.T. Act instead of passing the Order under section 143(3) of the I.T. Act, 1961. Though the assessee raised this point before the Ld. CIT(A)

and filed written submissions also, but, the Ld. CIT(A) has not given any finding on the same. Since it is a legal issue arise out of the record produced before the Ld. CIT(A) and that it goes to the legality of the assessment order, therefore, the Ld. CIT(A) was bound to decide the same by reasoned Order in accordance with Law. May be the assessee did not appear before the Ld. CIT(A) and filed written submissions, but, the points raised by the assessee should have been decided by passing a reasoned Order in accordance with Law. Learned Counsel for the Assessee also contended that assessee filed detailed explanation supported by material in the written submissions on merit to contend that even addition on merit is not justified. Since the legal issue goes to the root of the matter and may have effect on the issue of addition on merit also, therefore, we are of the view that the entire matter requires reconsideration at the level of the Ld. CIT(A). In view of the above discussion, we set aside the Order of the Ld. CIT(A) and restore the appeal of assessee to the file of Ld. CIT(A)-29, New Delhi, with a direction to re-decide the appeal of

assessee in accordance with Law, by passing a reasoned Order on each and every submission raised by assessee. The Ld. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee as well as A.O. The assessee is directed to cooperate with the Ld. CIT(A) in finalisation of the matter instead of sending the papers through e-mail etc., Appeal of the Assessee is allowed for statistical purposes.

7. In the result, appeal of the Assessee allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(O. P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 16th July, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC-2' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.